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SPEECH

OF

HON. N. B. SMITHERS, OF DEL.,

ON

THE BILL TO GUARANTY TO CERTAIN STATES A REPUBLICAN FORM OF GOVERNMENT.

DELIVERED IN THE HOUSE OF REPRESENTATIVES, APRIL 19, 1864.

Mr. SPEAKER: It was not my purpose originally to have offered any suggestions in support of the bill now before the House; but the magnitude of the interests involved, and my connection with the committee from which it emanated, render it perhaps necessary, certainly appropriate, that I should devote a brief time to the explanation of its provisions and an enforcement of the principles upon which it is founded.

In performing this duty I will avoid all suggestions of a partisan character. I approach the subject desiring only to fulfill a constitutional obligation and to afford an adequate measure of relief to citizens who by the destruction of civil government suffer the evils of anarchy, or the scarcely less intolerable burdens of merely military rule.

The necessity of speedy and definite action upon this question seems apparent. Already, Representatives from States whose people have been in rebellion are knocking at our doors for admission. Already by the proclamation of the President and the consequent pronunciamientos of military commanders, the people are invited to erect civil establishments; and unless we define the terms upon which these governments will be recognized and the admission of Representatives insured, questions now sufficiently vexing will be rendered more difficult of solution.

To avoid these complications and authoritatively to announce a fixed and uniform rule for the observance of those who desire to reëstablish republican forms of government in lieu of those which have been subverted, this bill has been devised. Embodying in its provisions apt words chosen from the organic law, or from commentaries of almost equal authority, it eschews all theories concerning the status of the States whose people are in rebellion, and accepts as an admitted fact the overthrow of their State governments and the establishment in their stead of usurpations at war equally with the fundamental principles of the Constitution and the republican forms which we are bound to secure.

Planting itself upon the special ordinance that "the United States shall guaranty to every State in this Union a republican form of government," it finds its justification within the strict limits not only of constitutional authority but constitutional requirement. Recognizing in the origin and progress of the rebellion a power which by the express volition or acquiescence of the citizens of these States had abrogated their former governments, it proceeds upon the necessity of the reconstruction of their systems by the primary and organic action of the people. Maintaining that the legislative department is the only judge concerning the form of government which it is bound to guaranty, it denies that it is competent for the Executive to prescribe the conditions or to declare the requisites necessary to make that guaranty effective, and that as the consequence of the establishment of a State organization is the right to representation upon this floor, it assumes that no power, without the concurrence of this House, can decide when such condition adequately exists.

Such being in brief its fundamental principles, its specific object is to substitute, as rapidly as consistent with national safety, for the uncertain and unrestricted operation of military discretion the fixed and definite rule of an established civil magistracy, governing according to ascertained powers, prescribed by the express will of the people. Before proceeding to analyze the special provisions of the bill, I ask attention to certain axioms conferring power on the Government, limited only by the nature of the duty required to be performed. In doing this I shall not attempt any crude theories or speculative disquisitions. It is sufficient for me to resort to powers specifically conferred by the Constitution, and to arguments drawn directly from the teachings of the fathers. These postulates are thus clearly and cogently defined by Alexander Hamilton, in No. 31 of the Federalist:

"A Government ought to contain in itself every power requisite to the full accomplishment of the objects committed to its care and the complete execution of the trusts for which it is responsible; free from every other control but a regard to the public good and to the sense of the people.

"As the duties of superintending the national defense and of securing the public peace against foreign or domestic violence involve a provision for casualities and dangers, to which no possible limits

can be assigned, the power of making that provision ought to know no other bounds than the exigences of the nation and the resources of the community."

Subjected by the Constitution to the necessity of the guaranty of republican government to the States, there must necessarily accrue to the United States the right not only to declare the existence of the contingency on which its action is invoked but to determine the choice of the means necessary to render it effectual.

Being a political power it is necessarily exclusive and not subject to the supervision of any other tribunal. As the exigencies requiring the exercise of the power are undefinable, the authority conferred is equally incapable of limitation, and rests in the sound discretion of Congress applying its own will and employing its own judgment in the enforcement of its own guarantee.

The framers of the Constitution were too wise to attempt to set bounds to that which in its very essence is impossible of definition, and instead of imposing any restraint they ordained the sweeping clause empowering Congress to pass all laws necessary and proper to carry into effect any power vested in the Government.

This express declaration was probably not necessary—the power would have resulted from the imposition of the duty—but they were too cautious and provident to leave to inference a grant essential to the preservation of the Union and the execution of the high trust to maintain the supremacy of the United States. In relation to these principles Mr. Hamilton, in No. 34 of the Federalist, uses the following language:

"Constitutions of civil government are not to be framed upon a calculation of existing exigencies, but upon a combination of these with the probable exigencies of ages according to the natural and tried course of human affairs. Nothing, therefore, can be more fallacious than to infer the extent of any power proper to be lodged in the national Government from an estimate of its immediate necessities. There ought to be a capacity to provide for future contingencies as they may happen, and as these are illimitable in their nature so it is impossible safely to limit that capacity."

If such be the nature of discretionary power lodged in a Government in its application to the subjects of its ordinary exercise, how much more does it require that it should be unrestrained when it is invoked for its preservation.

It is vain to attempt to control the discretion of an individual who acts upon the impulse of self-defense. It is worse than folly to ingraft upon an instrument designed to perpetuate its own existence provisions denying a capacity equal to the occasion. It is absurd to require that Congress shall guaranty a republican government to States, and deny the right of judgment as to the exigency or the means necessary to execute the trust. To do this would be to require that the instrument should invite to violations of its own provisions; and as every breach of the fundamental law, no matter upon what necessity, would but familiarize the mind with infractions, it is bnt safe to infer that the Constitution has invested us with power commensurate with the duty to be performed.

I am aware, Mr. Speaker, that these maxims are or ought to be familiar; that they are axiomatic principles lying at the foundation of every government and that they inhere in the United States as fully as any other element of sovereignty. Because they are ancient and well established I have chosen to propose as the groundwork of this bill these fundamental truths, the teachings of those great masters of political ethics who when they had builded our national structure engraved upon its portals these postulates of power by which to enable us to maintain it unimpaired, even against the earthquakes of rebellion.

With this brief outline I pass to a consideration of the principal features of the proposed enactment.

It is the purpose of the committee, before putting it upon its passage, to change the provisions authorizing a State government to be reëstablished by one-tenth and to require the assent of a majority of those who may be enrolled, and in my remarks I will treat the bill as thus modified.

Much of the bill is necessarily devoted to the mere machinery by which it is to be operated. Its leading features are few and simple.

The first idea presented is that no State can or ought to be recognized as capable of organization until military resistance to the United States shall have been suppressed therein and the people shall have demonstrated fidelity to the Constitution and a return to obedience to the laws. Until that time they are to be considered as under the tutelage of the General Government. To this end it is provided in the first section that the President shall appoint for each such State—in addition to the ordinary officers—a governor *ad interim*, to be charged with the civil administration.

Regarding the unhappy condition of those who by the advance of our arms are brought within our actual control, it is the design of the bill not only to offer facilities for the establishment of a permanent government, but, until that shall have been accomplished, to afford the advantages of a civil magistracy to citizens who, subject to its jurisdiction, have not the ascertained will or the numerical force to maintain a regular system. Under the most favorable circumstances, time must necessarily elapse before they can perfect any organization. In the mean time the exigencies of a community require the administration of laws, the punishment of crimes, the enforcement of contracts, and the adjudication of civil rights.

The civil power of the provisional governor, except so far as relates to the preparatory measures for organizing a convention, consists in taking care that the laws of the United States and of the State in force when the State government was overthrown shall be administered. For the temporary exigency the United States adopts the code of the State for the government of the people *ad interim*. This seems manifestly appropriate. It recognizes the urgency of the occasion, and, instead of subjecting them to new and untried enactments, confers upon them for their governance a system with which they are already familiar. To this general proposition are three exceptions: it is declared that no law whereby slavery is recognized shall be enforced; that laws for the trial and punishment of white persons shall extend to all persons; and that no person shall be a juror who has held any office or voluntarily borne arms under the rebel usurpation.

To these excepted cases it is difficult to imagine any well-grounded objection. There can be none as to the question of power. The officers charged with the execution of the laws are the agents of the national Government; and the code adopted for the regulation of the civil policy of the community, though priorily existing, is *pro hac vice* the enactment of Congress. Adopting these laws because of their supposed adaptation to the requirements of the people in the several localities wherein they have obtained, they are nevertheless as fully the ordinances of this Government as though they had been enacted in express terms. Emanating from this Legislature as original propositions, it is for us to determine how much of such former laws are adapted to the exigency. By this clause no change is wrought in the permanent body of legislation. It is merely the temporary expedient devised for the immediate necessity of Government, and enduring only so long as the society which it regulates remains in an unorganized condition. These propositions are equally defensible in principle and policy. That the Government in any order to its own officers should issue instructions for an original recognition of slavery is absurd. Whatever may be the sentiment as to the right of the States to control their domestic institutions, I suppose that it will not be pretended that officers and agents of the United States should be appointed to administer the slave code of any State under the immediate direction and sanction of the national Government. It would be the simple proposition not to protect the institutions of a State, but to originate and administer its obnoxious enactments as the express will of the representatives of the nation. So with the provision regulating the trial of criminals. In providing that the laws shall apply alike to the punishment of all persons, it announces a principle of equal and universal justice; and without the provision regulating the qualification of jurors there would be no guaranty that the rights of the Government would be respected or justice to loyal men secured.

Having thus provided for securing civil government to citizens during the period of their political disorganization, the bill proceeds to define the mode by which a convention shall be called to declare the will of the people relative to the re-establishment of a State government. It enacts that an enrollment shall be made of all white male citizens of the United States resident in the State, prescribes the condition of loyalty as requisite to the right of suffrage, defines the number and qualification of the delegates, provides for the ratification by the people of the constitution ordained by the convention, directs the return thereof when ratified to the provisional governor, and requires that it be certified by him to the President of the United States, who, after Congress shall have assented, is directed by proclamation to recognize the government so established as the constitutional government of the State.

In all this proceeding the right of the people to establish their organic law is recognized and maintained. Three conditions are prescribed as essential to the enforcement of the guarantee, and as necessary to the safety of the Republic:

First, that no person who has held any office under the usurping power shall vote for or be a member of the Legislature, or Governor. It will be perceived that the exclusion is limited to those who have held official positions. To accept and administer an office is *prima facie* evidence of two facts—voluntary adhesion to the rebellion and presumptive capacity for the administration of public affairs.

Apart from the apparent propriety growing out of these considerations, the exclusion is rendered necessary by the provisions of the Constitution of the United States. By section two of article one it is provided that electors of Representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State Legislature, and there is no other qualification for a Representative than that he shall have attained the age of twenty-five years, have been seven years a citizen of the United States, and when elected be an inhabitant of the State. By section three it is ordained that Senators in the Senate of the United States shall be chosen by the Legislature, and in case of vacancy by the executive of the State.

Thus intimately connected is the State administration with the Government of the United States; and it is to prevent the possibility of placing the national resources under the control and the national life at the mercy of those who have so lately demonstrated their hostility to republican institutions, that this clause of exclusion has been prescribed. It is designed as a caveat against the recurrence to power of those base men who, with

oaths of fidelity to the Constitution upon their lips but with treason rankling in their hearts, sat in these Halls as the legal guardians of the Government, while in secret they conspired the overthrow of the Republic and stimulated their followers to rebellion against its authority.

The second condition is that involuntary servitude is to be prohibited, and the freedom of all persons guarantied in such State.

As the few remarks which I would otherwise make in relation to this clause will be equally appropriate to the section which specially declares emancipation, I will postpone comment until it shall come under consideration.

The third proviso is that no debt created under the sanction of the usurping power shall be recognized or paid.

It will be observed that this clause has relation to obligations created by State or confederate authority. It has no reference to private engagements. This Government, Mr. Speaker, is burdened with an immense debt, imposed by the necessity of the suppression of the rebellion. The pledge for its payment is the capacity of the national resources. The States to be organized under the provisions of this bill are, of right, subject to contribute a proportionate share; and it is the duty of the Government to insist that they shall not be rendered unable to meet their liabilities by the assumption of indebtedness contracted or imposed in contriving its destruction. The agreements and statutes by which these pretended obligations have been created are utterly void. The offspring of usurpation, their payment would be a bribe to future rebellion and their assumption a defiance to the authority of the United States.

But, Mr. Speaker, it has been charged that this bill, in providing for reorganization, abandons the fundamental principle of this Republic, that all just powers of government are derived from the consent of the governed.

This allegation is worthy to be considered, and, if the criticism be just, will constitute a reasonable objection. I presume that it is not denied that it is desirable to furnish civil government to the loyal people of these States at a period as early as practicable. It is also conceded that this government should be based upon the will of the people, legitimately expressed. The guarantee of the Constitution requiring a republican form, it is essential that it should recognize popular sovereignty as an indispensable element in the political structure. Before proceeding to reply specifically to the objection, it is proper to refer to the condition of the States whose governments are to be organized.

I have said, Mr. Speaker, that the bill proposes no special theory as to their status. While this is true, except only so far as it is to be inferred from the employment of constitutional terms and phraseology drawn from authoritative commentaries, and while it is, therefore, true that the advocates of any of the several theories can consistently support it, nevertheless the argument requires that I offer what I believe the true position in which they are placed by the rebellion and the consequent relation they sustain to the United States, as wholly justifying the provision in question.

I do not agree, Mr. Speaker, with those who hold that the suspension or subversion of an existing government necessarily destroys the State. A nation can exist without an administration. It may suffer an interregnum; its lawful rulers may be overborne; a usurper may seize the instruments of authority; the faithless repositories of its power may abuse their trust and wrest to their own aggrandizement the functions of office. Still the State remains. It resides in those in whom is vested the ultimate right of sovereignty.

"I am the State," was the arbitrary declaration of the despotic Louis. The people are the State, is the maxim of republican America. This principle is nowhere more tersely or cogently announced than in our own Declaration of Independence, in which, after charging the king with dissolving representative houses and refusing to cause others to be elected, it declares as the consequence, that "*the legislative powers, incapable of annihilation, returned to the people at large for their exercise, the State remaining in the mean time exposed to all the dangers of invasion from without and convulsions within.*" The same idea is presented, perhaps more clearly, certainly more fully, by Mr. Madison, in No 3 of the letters of Helvidius. Treating of the rights of States, in relation to a kindred subject, he uses this language:

"Public rights are of two sorts: those which require the agency of government; those which may be carried into effect without that agency.

"As public rights are the rights of the nation, not of the Government, it is clear that wherever they can be made good to the nation without the office of Government, they are not suspended by the want of an acknowledged Government or even by the want of an existing Government."

Here the distinction is clearly marked between the Government and the nation, the agent and the principal, the office and the State. Having thus defined the position, he maintains it by an example so pertinent that I quote it in illustration of the principle for which I contend:

"Suppose that after the conclusion of the treaty of alliance between the United States and France a party of the enemy had surprised and put to death every member of Congress; that the occasion had been used by the people of America for changing the old Confederacy into such a Government as now exists, and that in the progress of this revolution an interregnum had happened; suppose, further, that during this interval the States of South Carolina and Georgia, or any other other parts of the United

States, had been attacked and been put into evident and imminent danger of being irrecoverably lost without the interposition of the French arms, is it not manifest that as the treaty is the treaty of the United States, not of their Government, the people of the United States could not forfeit their right to the guaranty of their territory by the accidental suspension of their Government, and that any attempt on the part of France to evade the obligations of the treaty, by pleading the suspension of Government, or by refusing to acknowledge it, would justly have been received with universal indignation as an ignominious perfidy?"

The Constitution of the United States, Mr. Speaker, is a compact between all the people of the several States in this Union. By its express terms the United States is bound to guaranty to each State a republican form of government. The people of New York, equally with those of Tennessee, have the right to demand that this guaranty shall be fully and faithfully executed. It is a public right, and the obligation to its performance does not depend on the presence of a government in the State. It would have been ineffectual had it supposed its absolute continuance. Were the people able to make head against the usurpations of power or the violence of domestic factions, and to maintain the integrity of their government, the interference of the United States would, ordinarily, have been unnecessary. The duty of the guaranty is not essentially dependent upon the co-operation of the State authority. The people, not the States, are the parties to the compact. The maintenance of the right is of exclusive and universal obligation. It extends to every State in the Union, and wherever there is a people there is both territorial and political existence, the latter being composed of the elements of sovereignty, and, in the absence of organized government, dwelling in the loyal inhabitants of the State.

This general guarantee, Mr. Speaker, would have existed in the absence of the special clause declaring its obligation. The nature of the Constitution, the necessity of Union, the requirements of public law would have demanded its exercise. It would have resulted from the compact of the people and the objects of the Government. The rule is thus laid down by Vattel:

"If a nation is obliged to preserve itself, it is not less obliged to preserve all its members. The nation owes this to itself, since the loss of one of its members weakens it and is injurious to its own preservation. It owes this also to the members in particular in consequence of the very act of association; for those who compose a nation are united for their defence and common advantage, and none can be justly deprived of this union and of the advantages which flow from it while he on his side fulfills the conditions. The body of a nation cannot therefore abandon a province or town or even a particular person who has done his part, unless obliged to it from necessity or unless it is made necessary by the strongest reasons founded on the public safety."

But, Mr. Speaker, as a nation may be obliged from overruling necessity to abandon its citizens, so the individual may be forced, by the exigency of circumstances, to yield to the power of the usurper. No matter how loyal he may be in sentiment, *flagrante bello* he is a public enemy, for his personal condition is determined by that of the society of which he is a part.

But as in a nation allegiance and protection are correlative, when the power of the Government has been asserted, the person thus forced to disguise his loyalty is to be held harmless, unless he has given aid or comfort to the enemy, and is remitted to his rights as a citizen, subject to the exigencies supervening upon the contest and necessary to the safety of the nation.

If the proposition be true, Mr. Speaker, that the loyal people of the State are the repositories of its power and unorganized sovereignty, then is this bill not liable to the objection proposed. In providing the preliminary arrangements it must of necessity proceed upon the primary idea of the destruction of government, and therefore begin *de novo* with the rude elements of an unformed political society. The first step in the formation of a government based upon the will of the people is to determine of what persons that people shall be deemed to consist. For this purpose an enrollment is directed to be made of all white male citizens of the United States resident in the State and in their respective counties. This provision recognizes the existence of the State in its territorial and political subdivisions as established by the laws anterior to the rebellion. It also confines the enrollment to the white male citizens, recognizing in them alone the right of government. This enrollment of itself was manifestly insufficient to define those entitled to be considered capable of taking part in the organization or of consenting to the reëstablishment of the new system. By its terms all white male citizens were to be enrolled; but inasmuch as rebels are citizens of the United States, though arrayed against its authority, a test must necessarily be applied to ascertain who, being loyal, are entitled to participate in framing the organic law. The bill does not regard any right as pertaining to those adhering to the rebellion. They are excluded from all share in the government formed under its auspices. The test proposed is an oath to support the Constitution of the United States. The persons thus taking the oath must constitute a majority of those who are enrolled. These persons so enrolled and testifying to their loyalty are deemed to constitute the people. By their assent the machinery of government is to be set in motion. On their consent the constitution to be ordained is to rest, not only in the origin of the convention, but in its ratification by their express will.

How, then, can it be pretended that the government is not based upon the consent of

the governed? Is it because persons are excluded who refuse to qualify themselves by taking the oath of allegiance? Surely it can be no deprivation of any political right to declare that he who renounces obedience to the Government shall not have the privilege to determine concerning the form of State government to be established.

I deny that a rebel has any political rights. I deny that in any legitimate sense he is or ought to be held as one of the people authorized to form or administer government. That he is not recognized by this bill as entitled to citizenship is the result of his own refusal to acknowledge allegiance to the United States.

But it may also be alleged, Mr. Speaker, that the bill is objectionable because it provides that a number less than a majority of those who were formerly citizens of the State may ordain the constitution.

If this comprises all the loyal people it is difficult to discover on what principle it can be denounced as anti-republican. If they are satisfied with the law of restoration, in accordance with the act of Congress, who has the right to complain? By their own volition they accept the terms of reorganization, and it ill behooves those not subject to the laws which they enact for their own government to deny them the privilege of entering upon the administration of their own domestic affairs.

The proportion to be established by the bill is a matter for consideration; not with the view of avoiding the charge of a violation of the principle of republican government, but of ascertaining whether there is a body capable of self-rule and of maintaining civil administration in the State.

But, Mr. Speaker, we are also met with the objection that this bill, by the provision of emancipation, interferes with the rights of the several States within its purview to regulate their domestic institutions. This is no novel suggestion. It is as old as the struggle for the adoption of the Constitution. It constituted a material portion of the argument of those who arrayed themselves against the formation of the national Government. From that time until now it has been constantly thrust forward in every discussion involving the right of Congress to adopt measures requisite for the national advantage.

Do we propose to exercise the power of regulating the currency? We are met by the dogma of State rights, enlisted in the interest of local banks.

Do we endeavor to exert our authority to regulate commerce? We are confronted with the same phantom of State rights, pressed into the service of some municipal corporation.

Do we determine to save the Government, reeling beneath the blows of a formidable rebellion organized and operated by the instrumentality of African slavery? We dare not accomplish its suppression and prevent the contingency of future insurrections for fear we shall invade the hallowed precincts of State rights.

Mr. Speaker, it is time that there was an end to this delusion. The danger to this people is not from centralization but disintegration. The sad spectacle of to-day is a mournful confirmation of the fears of our fathers. The miseries now afflicting the Republic have been produced by the unceasing efforts of local partisans to persuade the people of the hostility of the national Government to their domestic institutions. It has culminated in rebellion against its authority. Combatting this pernicious doctrine, the advocates of the Constitution demonstrated, by examples drawn from the history of nations, that instead of invading the rights and absorbing the functions of the local governments, the probable result would be that the States would trench upon the proper office of the national administration. They showed that, influenced by constant familiarity with their affairs, affected by the immediate protection afforded to his person and property, and looking to them as the direct means of official preferment, the citizen would come to regard the States with the higher affection, and that because of the apparently more remote and infrequent presence of the protecting power of the nation he would hold it in less esteem, though far more potent in securing his safety and happiness.

Not content with this refutation of this objection to the plan of the convention, Mr. Madison, rising to the dignity of his high office, and imbued with the paramount importance of the national Union, thus boldly announced his opinion of their comparative benefits:

"If, in a word, the Union be essential to the happiness of the people of America, is it not preposterous to urge as an objection to a Government without which the objects of the Union cannot be attained, that such a Government may derogate from the importance of the governments of the individual States? Was then the American Revolution effected, was the American confederacy formed, was the precious blood of thousands spilled and the hard-earned substance of millions wasted, not that the people of America should enjoy peace, liberty, and safety, but that the governments of the individual States, that particular municipal establishments might enjoy a certain extent of power, and be arrayed with certain dignities and attributes of sovereignty?

"It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the people is the supreme good to be pursued, and that no form of government whatever has any other value than may be fitted for the attainment of this object."

These words of power and wisdom are as applicable to the present condition of public affairs as when they were written to secure the adoption of the Constitution—as mighty to save as to found a nation.

If indeed there were such antagonism between the two systems of government that one or the other must perish, it would be for the people to judge which should be sacrificed; whether that which renders us great and powerful and prosperous should give way to the maintenance of petty municipalities that could secure neither respect abroad nor concord at home. Should the dread alternative be presented, I mistake the temper of the people, and their estimation of the solid and substantial benefits of the Union, if they would not choose a consolidated and centralized Government rather than underlie the calamities incident to individual States or miserable confederacies, the inevitable prey of intestine strife and foreign domination.

But, Mr. Speaker, much has been said about overleaping constitutional barriers. What definition has the Constitution prescribed to the exercise of power in the suppression of rebellion against its authority? What limitation has it fixed against its own preservation? What measure of force does it indicate as sufficient to preserve the Union? This Government is as unrestricted in the scope of its faculties as the veriest despotism. Its weakness consists not in its want of inherent powers, but in their distribution and in the dependence of the temporary administration upon the final sanction of the people. This necessity for their concurrence renders a republican Government least fitted to cope with sudden and desperate emergencies. There is always a party in the State arrayed in opposition to the ruling policy. Appeals are made to the final tribunal for its judgment, and its administrators are alternately charged with despotism and imbecility. This principle of absence of limitation is clearly expressed by Mr. Hamilton, in No. 33 of the Federalist, in his comment on the general enabling clause of the Constitution:

"But it may be asked, who is to judge of the necessity and propriety of the laws to be passed for executing the powers of the Union? I answer, first, that this question arises as well and as fully upon the simple grant of those powers as upon the declaratory clause; and I answer in the second place, that the national Government, like every other, must judge in the first instance of the proper exercise of its powers, and its constituents in the last."

Subjected to this test of approval it must of necessity exercise caution, not because of the want of constitutional power, but lest it should be overruled by those in whom lies the final arbitrament. If these concur, then it is unrestrained in the use of the means committed to its discretion and employed toward the object of its creation.

But, Mr. Speaker, if it were possible that there could be so absurd a thing as a simple Government destitute of the powers necessary for its own preservation, let me call the attention of the House to an example drawn from the history of the nation.

The Convention that ordained the Constitution was charged with having exceeded its commission. It was alleged that its members had overstepped the limits of their authority—that they had no capacity to form a Government, but only to propose amendments to the existing Articles of Confederation. In defending the Convention against this arraignment of the enemies of the Constitution, upon their own hypothesis of an excess of jurisdiction, Mr. Madison thus sums up his judgment upon the proposed charge:

"Had the Convention under all these impressions and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the hazard of events, let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen on the conduct and character of this assembly? The sum of what has been advanced and proved is that the charge against the Convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; that if they had exceeded their powers they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty they assumed."

The gentleman from Ohio, (Mr. GARFIELD,) who has been so fiercely assailed for his manly declaration, can take courage that he is sustained not by the vagaries of fanatical abolitionists or border State radicals, but by the example of the fathers of the Constitution, commended in the breach of their authority by the calm and contemplative Madison.

To these peculiar friends of the people, whose jealous vigilance of the Constitution leads them to contemplate with stolid indifference or inward satisfaction the disruption of the Union, he can reply, in the language of the patriot:

"No little, ill-timed scruples, no zeal for adhering to ordinary forms, are anywhere seen except in those who wish to indulge under these masks their secret enmity to the substance contended for."

But, Mr. Speaker, I have endeavored to show that there is no necessity for a resort to this extreme right; that we are invested with plenary discretion, controlled only by the emergency and the sanction of our constituents. Two questions are to be solved: is emancipation necessary to our safety? will it be justified by the people?

What threatens the disruption of the Union? What has brought upon the nation this terrible crisis of civil war? What engine of mischief so potent as to have arrayed a people against their Government? Slavery. Type of a barbaric and receding civilization, it stands confronted by the hosts of freedom.

I will not argue, Mr. Speaker, concerning the justice of our quarrel. I will not debate the necessity of crushing the rebellion. The people have determined that it shall be

...ts unhallowed cause shall be destroyed either by voluntary action or by the power of the sword. The war is between systems. Every soldier is an apostle of liberty, every cannon-shot a proclamation of emancipation, and the gleam of the bayonet in the hands of the negro illustrates his title to manhood. It becomes us in the exercise of the high functions with which we are invested to coöperate with the moral and material forces now engaged in the present salvation and future preservation of the Union.

I trust not, Mr. Speaker, wholly to presidential proclamations. I prefer to rest the security of the Republic upon the safer and more irrefragable basis of congressional enactments. I would not forego any possible precaution against the recurrence of fraternal strife. Homogeneity of institutions is our only safeguard, universal freedom the only possible solution.

Let us, then, Mr. Speaker, by this bill and by constitutional amendment, proceed boldly to the acomplishment of this necessary condition, and realize for ourselves the time contemplated by the great orator, when there will be "*non alia lex Romæ, alia Athenis; alia nunc, alia posthac, sed in omni tempore et in omnibus gentibus, una lex et sempiterna continebit.*" When this shall have been accomplished, though it will bring new and untried conditions of social, financial, and political existence that will tax the wisdom of the statesman and the endurance of the people, yet I have faith that they will be found equal to the emergency, and that this great nation, mightier for the struggle through which it has passed, its Constitution compacted by resistance to rebellion, and its people purified by the trial of fire, will pass to the fulfillment of its destiny, securing "the blessings of liberty to ourselves and our posterity," and ultimately the political regeneration of the world.

I send to the Clerk the following memorial, which I desire to be read.

The memorial was read, as follows:

To the Honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the undersigned loyal citizens of Louisiana respectfully represents that as Union citizens of New Orleans and the parish of Jefferson, and members of the Union Free State General Committee of the State of Louisiana, they have faithfully labored to accomplish the reorganization of civil government therein. That the plan proposed by the committee was based upon the idea that the constitution and State government of Louisiana had been overthrown by the rebellion, and that it was the duty of the loyal people, in the absence of an enabling act of Congress, to organize a new government, founded on the principles of republican freedom, so soon as a sufficient portion of the State should be brought under the control of the Union arms, and the population sufficiently imbued with sentiments of liberty and loyalty to render civil reorganization safe and permanent; and to this end the committee laid their plan before Brigadier General George F. Shepley, military governor of Louisiana, who, under orders from the President of the United States, gave his aid in carrying it out. The committee also recommended the assembling of a mass meeting of the citizens of the State, which was duly assembled at the St. Charles theater in the city of New Orleans, on the 8th day of January, 1864, was immensely large, representing New Orleans and the other parishes within the Union lines, and composed entirely of loyal citizens, who most enthusiastically indorsed the action of the Union Free State General Committee and called upon and authorized Governor Shepley to order an election of members of a constitutional convention to assemble in New Orleans at an early day. The leading ideas of this plan of the committee and popular demonstration aforesaid were a restoration of a civil government by the action of citizens without military control or interference, by means of a constitutional convention, elected by loyal people, only. These ideas were reversed and set aside by the proclamation of the major general commanding this department, issued on the 11th day of January, 1864, in which he ordered the election of a Governor, a Lieutenant Governor, and five other officers of an executive department, only, under the constitution and laws of Louisiana, except such as related to slavery, which is not mentioned in the constitution, thereby recognizing officially that the constitution of Louisiana was not destroyed by the rebellion, but existed.

This proclamation also announced that martial law was the fundamental law of the State, and lastly directed that an election of members of a convention "for the revision of the constitution," thus again recognizing its existence, should take place on the 4th of April, which the general subsequently changed to the 29th of March. These elections have been held. A Governor and other State officers were chosen on the 22d of February and members of a convention on the 28th of March. Your memorialists solemnly protest against this course of proceeding. They maintain that a commander of an army should not be permitted to organize civil government in a State at his own will and pleasure and according to his own orders, but that such powers should be reserved to Congress or to the people. Your memorialists are of opinion that the elections just held were carried by the influence of the name of the commanding general, since, and as it was universally declared and believed, his wishes were in favor of one set of candidates and opposed to the other, the election was not free, but from the immense influence which, under the reign of martial law, such a belief produced, it was not possible the elections could have had other than that which it was thought the commanding general desired. Your memorialists maintain that a State government should only be organized when there can be no possibility imputed any military or other improper influence, and should not be attempted while martial law is proclaimed and enforced as the fundamental law of the State, and they are of opinion that under the circumstances no State reorganization should take place until Congress shall have provided for it, or it shall have been fully and fairly ascertained that the mass of the citizens of the State desire a loyal State government that will secure and perpetuate the liberties of all the inhabitants.

Your memorialists, therefore, respectfully urge upon Congress not to recognize the late proceedings in the form of elections which have been had in this State, and they pray your honorable body to pass an act enabling the loyal citizens of the State of Louisiana to form a new State Government, and that you will by proper provisions secure the rights of all the inhabitants, and also the entire freedom of the election, at such time as you shall deem proper for holding the same.

THOMAS J. DURANT,
and sixteen others.

Printed by Lemuel Towers, corner Sixth street and Louisiana Avenue, Washington.

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